ACTION IO-00

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INFO	LOG-00	AID-00	ACQ-00	CIAE-00	DINT-00	EB-00	EUR-00
	UTED-00	TEDE-00	INR-00	LAB-01	L-00	NSAE-00	NSCE-00
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FM USMISSION GENEVA
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INFO EUROPEAN POLITICAL COLLECTIVE
DEPT EDUCATION WASHDC
SECDEF WASHDC
DEPT HHS WASHDC
NATIONAL SECURITY COUNCIL WASHDC
DEPT INTERIOR WASHDC
JOINT STAFF WASHDC
DEPT JUSTICE WASHDC
USMISSION USUN NEW YORK
DEPT LABOR WASHDC

UNCLAS GENEVA 001769

SENSITIVE

E.O. 12958: N/A
TAGS: PHUM; MARR; UN;PINR
SUBJECT: UN HUMAN RIGHTS COMMITTEE -- USG JULY 17018 PUBLIC HEARING

1. (U) Summary. A 26-person USG delegation headed by Principal Deputy Director for Policy Planning Matthew Waxman appeared before the Human Rights Committee on July 17 and 18 to present the treaty-mandated U.S. report on U.S. implementation of the International Covenant on Civil and Political Rights (the Covenant). The delegation responded to wide-ranging and at times pointed questions on matters including domestic civil rights, immigration policies, the response to Hurricane Katrina, Indian affairs and indigenous rights, women,s rights, the conduct of the U.S. in the war on terror, USG overseas military operations, the role of the 50 states in implementing the treaty, and the USG legal interpretation of the myriad provisions of the Covenant. The Committee,s non-binding conclusions and recommendations are expected on or about July 28. Delegation members also conducted meetings with the press and human rights NGOs. The U.S. delegation,s departure statement appears at paragraph 15. End Summary.

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: ARCHIE M BOLSTER
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Human Rights Committee Hearing

2. (U) The U.S. delegation appeared before the 18-member Human Rights Committee to present the second and third U.S. periodic report under the International Covenant on Civil and Political Rights. As provided in the Covenant, all States Parties to the Covenant are required to file periodic reports for the Committee,s consideration. The 26-person delegation was headed by State Department Principal Deputy Director for Policy Planning Matthew Waxman and included as principal speakers DOJ Assistant Attorney General for Civil Rights Wan Kim, DHS Senior Advisor for Asylum Affairs Igor V. Timofeyev, Assistant Legal Adviser Robert Harris and Deputy Director of S/WCI Sandy Hodgkinson. Ambassador Tichenor and IO Deputy Assistant Secretary Mark P. Lagon also participated in the sessions along with representatives from the Departments of State, Justice, Defense, Interior, and Homeland Security. This was the first USG appearance before the Committee in 11 years.

3. (U) Before the hearing, the USG had provided the Committee a 250 page combined second and third periodic report on its implementation of the Covenant in October 2005 as well as extensive written responses to a list of 25 issues from the Committee on that report.

4. (U) During the three-hour session on July 17, Ambassador Tichenor introduced the U.S. delegation, followed by opening statements by Waxman and Kim. The delegation then provided an oral summary of the U.S. answers to half of the Committee,s 25 questions. Committee members then made comments and asked follow-up questions. During the three-hour session on the morning of July 18, the delegation replied to the previous day,s questions, answered the other half of the Committee,s prior 25 questions, and listened to further Committee questions. In order to answer all of these questions, the delegation agreed as a matter of courtesy to appear for a one hour third session on the afternoon of July 18.

5. (U) Committee questions, which were at times pointed, dealt with a wide array of matters including domestic civil rights, prison conditions, women,s rights, voting rights, death penalty, the sentencing of juveniles to life imprisonment without parole, access to housing, violence against persons on the basis of their sexual orientation, racial profiling, felon disenfranchisement, immigration policies (including rights of illegal aliens and non-refoulement policy), the response to Hurricane Katrina,

Indian Affairs (including the legal rights of Indian tribes and Hawaiians) , labor rights, administration of developmental drugs, de facto segregation in public schools, the terrorist surveillance program, the use of material witness warrants, and anti-Arab discrimination after September 11. Despite anticipated questions on the topic, the Committee did not ask any direct questions about the extent to which the Covenant addresses the issue of abortion, although it did ask and receive from the Department of Justice information about health and privacy policies involving women in federal prisons.

6. (U) The Committee also made extensive comments on legal matters including the long-standing U.S. legal position that the Covenant does not apply to the conduct of a State Party outside of its territory; U.S. reservations to the Covenant, and the role of the 50 states in implementing the Covenant. In addition, although in our view such matters fall outside the scope of the Covenant, the Committee asked numerous questions about overseas operations, including detainee operations in Guantanamo, Afghanistan, and Iraq; alleged secret sites; and renditions. While clearly and expressly preserving the U.S. legal position on these issues, the U.S. delegation as a courtesy provided information on its policies and the applicable U.S. law, based on existing guidance and the May 2006 U.S. presentation before the UN Committee Against Torture. Close and collegial work among the State, DOD, DOJ, DHS and DOI participants and support as needed from Washington helped achieve clear and effective U.S. interventions on these subjects.

7. (U) All hearings were open to the press and the public. Written materials provided to the Committee and the text of oral statements will be made publicly available on the Mission Geneva website (http://geneva.usmission.gov).

8. (U) The Committee,s conclusions and recommendations are expected on or about July 28.

NGO Meeting

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9. (U) NGO Meeting. On Sunday, July 16, Waxman, Lagon, Kim, Timofeyev, Harris, DRL Director Noyes, and other members of the delegation met with a group of about 25 NGO representatives. In addition to groups such as Amnesty International and Human Rights Watch, with whom Department officials meet regularly, the meeting also included other NGO's focused on more specific areas such as women,s rights

and indigenous rights. Many NGO representatives requested more regular dialogue with the USG on human rights matters. They also criticized the USG for not making its answers to the Committee publicly available before the hearing and not sufficiently including NGOs in the preparation of USG reports to the Committee. There was a proposal for a subsequent open meeting to review the Committee,s conclusions and recommendations and discuss how to implement them.

Comment
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10. (SBU) Like our appearance before the Committee Against Torture in May, this hearing attracted considerable media and NGO attention and provided a useful platform for the United States to engage in an open and comprehensive explanation of our legal approach to some contentious questions about USG policies and activities at home and abroad. There were more than 100 audience members at both sessions, including many NGO representatives, whom Committee members thanked for providing valuable information to the Committee. There was also some print and radio coverage.

11. (SBU) Committee comments and questions were at times pointedly critical, often more so than during the U.S. presentation to Committee Against Torture in May. Members clearly appreciated the delegation,s willingness to provide as much information as possible and engage in a dialogue, although the substance of their criticisms of U.S. policies on such issues as detainees in Guantanamo, Afghanistan and Iraq, renditions and alleged places of secret detentions was often sharp. Committee members seemed to recognize that the voluminous and thorough responses provided by the United States make it clear that it took the Committee and its processes seriously. Despite the delegation,s efforts to focus the hearing on domestic issues, Committee member,s interventions and questions often returned to issues such as Guantanamo, secret sites, and renditions. In fact, questions on these subjects dominated the first day of the hearings.

12. (SBU) There was also a lively debate on international legal issues. As the U.S. noted in its presentation, some of these stem from different philosophical approaches to the proper way to interpret treaty obligations, with the Committee increasingly asserting the existence of obligations not found in the text of the Covenant or agreed to by the United States. For example, Committee Members were strongly opposed to the United States, long-standing and principled legal interpretation (which the delegation resolutely

defended) that the Covenant does not apply to activities of States Parties outside of their territory. The U.S. delegation further respectfully clarified when asked that it did not agree with certain treaty interpretations expressed in the Committee,s non-binding "general comments," including one asserting that the Covenant,s prohibition on torture and cruel inhuman or degrading treatment or punishment creates an implicit prohibition on returning persons who might face torture or other mistreatment. The U.S. delegation clarified that its legal obligations on "non-refoulement" were the obligations it assumed under Article 3 of the Convention Against Torture, not under the Covenant.

13. (SBU) The Committee,s questions also failed to take into account the fact that U.S. treaty obligations were affected by the reservations to the treaty made by the United States at the time it became a party. As most of the Committee members are academics who have longstanding views on the treaty issues under discussion, there was little chance that they would change their opinions. Accordingly, the broader goal of the U.S. delegation was to clearly and persuasively explain its positions to the public and for the record of the conference and to engage in the process of a dialog and airing of views with the Committee, civil society, and the press covering the meetings. On the second day of the process, even some members of the Committee who strongly disagreed with U.S. legal arguments softened their rhetoric and admitted that there were principled differences of opinion under discussion.

14. (SBU) As with the CAT, the Committee,s written recommendations are issued unilaterally and without input from the United States. They will almost certainly contain a large number of observations that will be critical of the United States, policies and will contain assertions with which the United States disagrees as a matter of law. As noted above, these conclusions and recommendations are not legally binding.

U.S. Departure Statement

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15. (U) The delegation issued a departure statement that highlighted the following key policy and legal messages from the U.S. presentations:

-- At this meeting the United States showed its commitment to be as transparent as possible in addressing its record of protecting and promoting civil and political liberties.

-- The U.S. delegation shared information about how its system of robust checks and balances -- with strong legislatures, free press, civil society actors, and an independent judiciary -- provides the strongest basis for the protection of civil and political rights. That system was indeed a model for the drafting of the ICCPR.

-- The United States aims to hold itself to the highest standards. The dialogue with the Human Rights Committee was an opportunity to continue the ongoing process of fulfilling the U.S. commitment to what President Bush has termed the "non-negotiable demands of human dignity" and to U.S. obligations under the Covenant.
TICHENOR

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